

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 707 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BHAIJIBHAI K CHAMAR

Appearance:

1. Special Civil Application No. 707 of 1990
MR HARDIK C RAWAL for Petitioner No. 1
MR MUKESH H RATHOD for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 07/11/2003

ORAL JUDGEMENT

What is challenged in this petition under Article 227 of the Constitution is the judgment and award dated 11.8.1989 passed by the Labour Court, Nadiad in Reference (LCN) No. 570 of 1987 by which the Labour Court set aside the order of dismissal of the respondent-driver and directed the Corporation to reinstate the workman in service with 60% backwages.

2. The respondent was alleged to have driven the bus rashly and negligently causing an accident and injuring a six year old child which resulted into the Corporation being required to pay compensation of Rs.7,000/- as awarded by the Motor Accident Claims Tribunal. The respondent was also prosecuted and was convicted by the Court for the offence punishable under Section 279 of the Indian Penal Code and was sentenced to imprisonment till rising of the Court and fine of Rs.50 in lieu thereof. The Corporation terminated the respondent's service on the basis of the conviction recorded by the criminal Court as per the provisions of Regulation 81 of the Gujarat State Road Transport Employees Service Regulations. The respondent challenged the said termination order date 15.4.1987 before the Labour Court. The Labour Court set aside the order of termination on the ground that the Corporation had passed the order without holding a departmental enquiry and that there was violation of principles of natural justice.

3. Pursuant to the aforesaid award, the respondent-workman was reinstated on 10.10.1989 and that thereafter this Court passed interim order dated 5.3.1990 recording that the reinstatement of the respondent in service will be subject to the provisions of Section 17-B of the Industrial Disputes Act, 1947. As regards the backwages, the Court directed the Corporation to deposit the backwages as awarded by the Labour Court with liberty to the respondent to withdraw the backwages deposited by the Corporation on furnishing security to the satisfaction of the Labour Court.

4. Mr Hardik C Raval, learned counsel for the Corporation has submitted that the Corporation had given a notice dated 26.3.1987 (Annexure "A") to the respondent and the respondent had also submitted his reply dated 2.4.1987 (Annexure "A" colly.). Hence, it cannot be said that there was violation of principles of natural justice while passing the termination order dated 15.4.1987 under Regulation 81 of the Gujarat State Road Transport Employees Service Regulations.

5. On the other hand, Mr Rathod, learned counsel for the respondent has submitted that the respondent had already put in 27 years service when the Labour Court decided the reference in 1987, and therefore, in the facts and circumstances of the case, termination from service was too harsh an order to be passed by the employer.

6. This petition was heard earlier, but in view of the information called for by the Court on the question as to whether the respondent-workman was still in service or had retired, the dictation of the judgment was deferred.

Today, Mr Hardik C Raval, learned counsel for the petitioner-Corporation states that the respondent-workman has already retired from service, but as far as payment of 60% backwages is concerned, since the respondent had given security before withdrawal of the 60% backwages, that part of the award is required to be modified.

7. Assuming that the Corporation's giving the notice dated 26.3.1987 (Annexure A) can be said to be sufficient compliance with the principles of natural justice, it appears to this Court that in the facts and circumstances of the case and particularly the fact that the award of the Motor Accident Claims Tribunal against the petitioner-Corporation for the accident in question was only to the tune of Rs.7,000/- and that the respondent-workman who has already retired from service after putting in more than 30 years service, is already denied 40% backwages for the intervening period, which amount is substantially more than the amount of compensation paid by the Corporation, the Court is not required to exercise its extraordinary, prerogative and discretionary writ jurisdiction under Article 227 of the Constitution for interfering with the award of the Labour Court.

The petition is accordingly dismissed. Rule is discharged with no order as to costs.

(M.S. Shah, J.)

sundar/-